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No. ..-...

IN THE

Supreme Court of the United States

October Term, 1983

THE CITY OF LOS ANGELES, a municipal corporation, *et al.*,
Appellants,

vs.

COUNTY OF LOS ANGELES, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO DISMISS OR AFFIRM.

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Question Presented.

Is there currently any substantial federal question presented by the system of financing local government which existed in California prior to the passage of Proposition 13 in 1978, but which was eliminated by the passage of Proposition 13?

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Introductory Statement.

This an appeal from a final judgment of the Supreme Court of the State of California which sustained the decision of the Court of Appeal. This case was tried before the Superior Court of the State of California for the County of Los Angeles on March 31, and April 3 and 4, 1978. (Jurisdictional Statement, Appendix "A", p. 2a)

At the time of trial, city taxpayers paid *both* city and county property taxes. (Jurisdictional Statement, Appendix "B", p. 25a) The gravamen of the complaint was that taxpayers of the City of Los Angeles were required to pay a city property tax which in part was used to finance municipal services such as police patrol and detective services. City taxpayers also paid a County tax rate, a portion of which (they argued) was used to provide municipal-type services to residents of the unincorporated areas of the County. Thus, the argument went, city taxpayers were re-

quired to finance their own services and, in addition, were required to subsidize similar services to residents of unincorporated areas.

The trial court held that, under the State and federal constitutions, this practice denied equal protection to city taxpayers. (Jurisdictional Statement, Appendix "A", p. 16a) However, approximately two months after the trial, on June 6, 1978, California voters approved Proposition 13, which added Article XIIIA to the State constitution and eliminated separate city and county property taxes. Based upon this fundamental change, the Court of Appeal held that the case was moot. (Jurisdictional Statement, Appendix "A", p. 31a)

ARGUMENT.

I.

The California Courts Have Correctly Determined That This Case Is Moot.

Even taking the appellants' original theory at face value, local government financing was dramatically altered in California, and separate local tax rates were eliminated, by the passage of Proposition 13 some two months after the trial. Section 1(a) of Article XIIIA of the California Constitution now provides:

> "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

The above provision appears to give the Legislature considerable (if not absolute) discretion in allocating property tax revenues. Thus, depending upon how the Legislature chooses to allocate local property tax revenues, a particular entity may receive an amount equal to, greater than, or less than, the total amount of property taxes collected from its residents.

Presumably, the Legislature could permit each local public entity to levy a separate property tax rate, so long as all such rates when applied to a particular parcel of property did not aggregate more than one percent of the fair market value of such property. This the Legislature has not seen fit to do.

The immediate response of the Legislature to Proposition 13 was the enactment of Section 2237 of the California Revenue and Taxation Code, which provided:

> "(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency,

school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Government Code."

Thus, Section 2237 created a single local property tax to be shared by those local entities designated by the Legislature. For the 1978-79 fiscal year, Government Code Section 26912 allocated the four-dollar rate among local entities in proportion to the property tax revenue which each such entity had received in the 1977-78 fiscal year.

Section 2237 has since been repealed, but Section 93 of the Revenue and Taxation Code now contains similar language.

For the 1979-80 fiscal year, Section 96(a) of the Revenue and Taxation Code provided:

"For each tax rate area, each local agency shall be allocated an amount of property tax revenue allocated pursuant to Section 26912 of the Government Code to each local agency for the 1978-79 fiscal year, allocated to such tax rate area pursuant to paragraph (1) of subdivision (f) of Section 98, modified by any adjustments required by Section 99, and the amount of state as-

sistance payments allocated to such tax rate area pursuant to paragraph (2) of subdivision (f) of Section 98."

Section 99 provides for adjustments in tax revenues in cases involving jurisdictional changes, city incorporations, district formations, etc.

Section 97 of the Revenue and Taxation Code provides that for the 1980-81 fiscal year and each fiscal year thereafter, property tax revenues shall be allocated by a fairly complicated formula which adjusts any incremental annual tax increase according to tax rate area. "Tax rate area" is defined by Section 95(g) as "a specific geographic area all of which is within the jurisdiction of the same combination of local agencies and school entities for the current fiscal year." In the years since 1978, the allocation of property tax revenues by the Legislature has progressively deviated from the property tax rates in effect prior to the passage of Proposition 13.

It is thus apparent that there is now a single local property tax which is shared by all local entities based upon legislative allocation, such allocation being subject to change from year to year. All residents of the County, whether they reside in incorporated or unincorporated territory, pay the same $4 tax rate. As a result of paying his $4 rate, a city taxpayer receives municipal services from the city and general County services from the County. Similarly, as a result of paying his $4 rate, a taxpayer residing in unincorporated territory receives similar municipal-type services provided by the County and the same general County services. Under these circumstances, it is difficult to perceive how city taxpayers are in any way subsidizing taxpayers of the unincorporated areas of the County. It could just as well be argued that taxpayers of the unincorporated area of the County are subsidizing city residents. As long as the services

are similar in character, it would not appear to matter whether they are provided by the city or by the County.

Since there is now only a single local property tax rate, rather than separate city, County, school district, etc. rates, the Legislature could presumably give all property tax revenues to the school districts, for example, and provide other funding for cities, counties and other entities.

Since there is no longer either a city or a County property tax, appellants' basic theory of the case as set forth in the pleadings and at the trial no longer has any validity and the case is moot.

It should also be noted in that connection that the basic evidence upon which appellants relied, and the model for most other evidence introduced by appellants, consisted of two studies (Exhibits A and B to the complaint) which were performed in 1969-70 based upon the 1968-69 Los Angeles County budget. This evidence is now 15 years old, and even if the world of local government financing had not been turned upside down by Proposition 13, such ancient history would be highly suspect as bearing any relationship to present-day reality.

Finally, this case is moot because the potential relief available to appellants was also eliminated by Proposition 13. Prior to Proposition 13, when there were separate city and County tax rates, if appellants had prevailed, presumably there would have been a reduction in the County property tax rate. However, since there is now no separate County property tax rate, no such reduction would occur, and residents of the City of Los Angeles would continue to pay the uniform $4 rate even if respondents prevailed on the merits in this case. The only result of such a victory by respondents would be that the County would be restricted in how it used certain property tax revenues.

The Court has consistently refused to review cases which have become moot because of a change in law. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 13 How. (54 U.S.) 518 (1852); *United States v. Alaska Steamship Co.*, 253 U.S. 113 (1920); *Hall v. Beals*, 396 U.S. 45 (1969); *Sanks v. Georgia*, 401 U.S. 144 (1971); *Richardson v. Wright*, 405 U.S. 208 (1972); *Diffenderfer v. Central Baptist Church*, 404 U.S. 412 (1972).

II.

The State Courts Have Not Upheld the Constitutionality of a State Statute.

Appellants purportedly appeal to this Court pursuant to 28 U.S.C. Section 1257(2), which provides for appeal in cases: "* * * where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Having determined that under California law the case was moot, the Court of Appeal expressly declined to decide whether the pre-Proposition 13 system of financing local government was constitutional. (Jurisdictional Statement, Appendix "B", pp. 29a, 31a)

The Court of Appeal further noted that the current financing system was not before the trial court, and hence to entertain an appeal would be ". . . to engage impermissibly in a purely academic exercise." (147 Cal.App.3d 952, 961 (1983), Jurisdictional Statement, Appendix "B", p. 31a)

Thus, there has been no determination by the California courts, even at the trial court level, of the question of whether the *current* system of financing local government is constitutional. (It should be noted that since Proposition 13, local governments in California have become increasingly dependent upon State income and sales tax revenues ap-

propriated by the Legislature, rather than property tax revenues, and hence the picture is considerably more complex than appellants have tried to portray it.)

While there may still be a controversy between the parties as to the present financing system, any such controversy is clearly not ripe for determination by this Court, and should await adjudication by the California courts.

Conclusion.

Since the appellants have not met the jurisdictional requirements of this Court, the appeal should be dismissed, or in the alternative, the judgment of the California Court of Appeal that the case is moot should be affirmed.

DATED: April 12, 1984.

Respectfully submitted,

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